

1 Honorable Christopher Alston
2 Chapter 7
3 Hearing: April 19, 2019; 9:30 a.m.
4 Response date: April 12, 2019
5
6

7 IN THE UNITED STATES BANKRUPTCY COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON, AT SEATTLE
9

10 In re:
11 BEN MCINDOE,

12 DEBTORS

13 No. 15-17388

14 NOTICE OF HEARING ON THE
15 DEBTOR'S OBJECTION TO CLAIM
16 OF DEUTSCHE BANK NATIONAL
17 TRUST COMPANY, CLAIM #4
18 (Combined with Notice of Hearing and
19 Certificate of Mailing)

20 TO: Clerk of Court; and

21 TO: Deutsche Bank National Trust Co.
22 As Trustee
23 And Vanessa Power, and KC Harding, its Attorneys

24 YOU ARE HEREBY NOTIFIED THAT Ben McIndoe, the debtor herein, renotes
for hearing the Debtor's Objection to Claim filed under ECF Docket No. 47, and
incorporates the Objection filed therein. The objection was filed while the Debtor was in
Chapter 11, and the case was converted to Chapter 7 shortly thereafter. The Chapter 7
trustee has not renoted the matter for hearing, and since the debtor has a vested interest in
determining the amount of the claim or the allowance thereof, in that it affects the
debtor's right to a homestead and homestead allowance, the Debtor hereby renotes the
filed Objection for hearing.

25 Objection to Claim of the
26 Deutsche Bank #4

27 Page 1 of 3

28 VORTMAN & FEINSTEIN
29 929 108th Ave NE, Ste 1200
30 BELELVUE, WA 98004
31 (206) 223-9595
32 (206) 386-5355 (fax)

1 Ordinarily, the trustee prosecutes claim objections. “A debtor, in [his] individual
2 capacity, lacks standing to object unless [he] demonstrates that [he] would be ‘injured in
3 fact’ by the allowance of the claim.” *Cheng v. K & S Diversified Invs., Inc. (In re Cheng)*,
4 308 B.R. 448, 454 (9th Cir. BAP 2004), *aff’d mem.*, 160 Fed.Appx. 644 (9th Cir.2005).
5 There are “two recognized exceptions to the proposition that a chapter 7 debtor lacks
6 standing to object to a creditor’s proof of claim: (1) when disallowance of the claim
7 would create a surplus case, with the excess amounts payable to the debtor; and (2) where
8 the claim at issue would not be dischargeable.” *In re Cherne*, 514 B.R. 616, 621 (Bankr.
9 D. Idaho 2014), *aff’d* No. 1:14-CV-00356-EJL, 2015 WL 5611586 (D. Idaho Sept. 23,
10 2015), *aff’d sub nom. Matter of Cherne*, 700 F. App’x 716 (9th Cir. 2017).

11 There are only two claims in this case, one for the debtor’s prior counsel, which
12 has been paid and the debtor expects to be withdrawn, and the Internal Revenue Service,
13 for taxes owed by the non-debtor spouse, in the amount of about \$81,000. However, the
14 spouse is paying said claim on an installment payment agreement, and the amount of the
15 claims over the last 3 years of this case has or should have been reduced significantly.
16 (The parties are in dissolution proceedings, so the Debtor is not aware of the current
17 status of her obligation to the IRS.)

18 The amount of the claim of Deutsche Bank is about \$550,530 plus accruing
19 interest. The Debtor’s home is worth at least \$650,000. If the claim of Deutsche Bank is
20 defective, as outlined in the Objection to Claim noted herein, there would be a substantial
21 surplus to the estate, not only over and above a homestead of \$125,000 but several

1 hundred thousand dollars in excess thereof. The debtor has a vested interest in
2 determining the amount of said claim.

3 A hearing on Debtor's objection filed under ECF Docket No. 47 is scheduled for
4 **Friday, April 19, 2019 at 9:30**, in Courtroom 7206, 700 Stewart Street, Seattle, WA
5 98101. Unless a response is filed by the reply date set forth above, April 12, 2019, then
6 the debtor shall present an Order disallowing the claim as set forth herein.

7 The Debtor understands that the trustee may have an offer on the home, and will
8 be noting for hearing a sale thereof. The Debtor requests that if a sale is approved and
9 closed prior to the final determination herein of the claims of Deutsche Bank, that all
10 proceeds from the sale remain in escrow and not be disbursed until a final determination
11 is made herein.

12 Any creditor/claimant opposing Debtors' objection to claim should file a written
13 response and/or objection with the Court and serve a copy on the undersigned a least
14 seven (7) days prior to the scheduled hearing. Proof of service: this notice of hearing
15 was served electronically via ECF on attorneys for the creditor, KC Harding and Vanessa
16 Power; the Chapter 7 trustee and Trustee's attorney, and was mailed by first class mail to:
17 Deutsche Bank National Trust Company, as trustee,
18 Select Portfolio Servicing, Inc.
19 P.O. Box 65250
Salt Lake City, UT 84165-0250

20 DATED this 20th day of February, 2019.
21

22 /s/ Larry B. Feinstein
23

24 Larry B. Feinstein, WSBA #6074
Attorney for Debtor